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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
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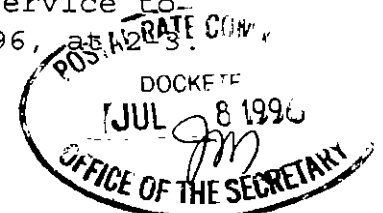
Special Services Fees and Classifications) Docket No. MC96-3

OFFICE OF THE CONSUMER ADVOCATE OPPOSITION
TO MOTION OF THE UNITED STATES POSTAL SERVICE
FOR RECONSIDERATION OF ORDER NO. 1120
(July 8, 1996)

The Office of the Consumer Advocate (OCA) hereby files its opposition to the Motion of the United States Postal Service for Reconsideration of Order No. 1120, June 28, 1996. Although directed by the Commission to "submit cost presentations that reflect the Commission's Docket No. R94-1 attribution methodology,"¹ the Postal Service continues to resist and/or delay production of this information by tactics such as the captioned motion for reconsideration.

The Commission and the Postal Service have disagreed for nearly a decade over the question of which attribution methodology for city carrier access costs best promotes the goals of the Postal Reorganization Act. It is the view of the OCA that

¹ Order No. 1120, Order Directing the Postal Service to Provide Additional Cost Presentations, June 18, 1996, at 123.



this issue was resolved once and for all in the Commission's opinion and recommended decision in PRC Op. R90-1 on Remand, September 27, 1994. However, the Postal Service willfully resists providing cost analyses comporting with the Commission's attribution methodology for city carrier access costs on each occasion that such attribution is needed. We urge the Commission to impose the penalty available under 39 U.S.C. § 3624(c)(2) if the Postal Service persists in its refusal to provide a PRC-format Cost and Revenue Analysis (CRA).

The Postal Service frames four arguments to support its motion for reconsideration: 1) in this proceeding, the difference in attributable costs using the Commission's methodology rather than the Postal Service's is insignificant, 2) the Postal Service claims that it has complied with Commission Rule 54 and nothing more is required, 3) the Commission should itself produce the CRA in PRC format, and 4) Commission Order No. 1120 is unduly burdensome. None of these arguments have merit, and each should be categorically rejected.

The Postal Service's argument that the Commission's attribution methodology need not be applied in Docket No. MC96-3 because cost differences are insignificant is an example of the Postal Service's resistance to accepting the Commission's primacy

over costing matters. Once a costing methodology has been judged to be one that best comports with the objectives of the Postal Reorganization Act, participants are not at liberty to employ methodologies that they prefer. Rather, a methodology explicitly adopted by the Commission as conforming most closely to congressional policies achieves precedential status and may not be cast off at the caprice of a participant.

In PRC Op. R90-1 on Remand, after an exhaustive exposition by the Postal Service and Mail Order Association of America, et. al., the Commission determined that its approach to city carrier access cost attribution, not the Postal Service's, was in harmony with congressional and judicial objectives:

A balanced reading of the Commission's prior Opinions makes it clear that the Commission's view is consistent with the view of Congress and the courts, that causality has primacy as an attribution principle, not volume variability.

Id., ¶ 339. Unlike the Postal Service, which "enshrine[s] the effects of marginal volume changes on total costs as the preferred definition of attribution," the Commission promotes the Postal Reorganization Act's requirement that "causation [be] the basis for attribution." Id., ¶ 332.

The Commission's conclusion is based upon the Supreme Court's interpretation of § 3622(b)(3) of title 39:

The Court, therefore, has construed § 3622(b)(3) to obligate the Commission to attribute to subclasses all costs that can be reliably associated with them, regardless of economic theory, primarily for reasons of inter-class equity.

Id., ¶ 334. Attribution of city carrier access costs by the Commission's single-subclass stops methodology best satisfies the causation requirement as interpreted by the Supreme Court:

Mindful of this statutory obligation, the Commission has attributed costs under several different analytical criteria. The most straightforward of these is the criterion of exclusivity. If a cost is incurred for the benefit of only one class of service, and would not be incurred but for the provision of that class of service, the causal link to that service is self-evident. For exclusive costs, whether fixed or variable, no further analytical tool is required. . . . Applying the same logic of exclusivity, the Commission attributed the access costs associated with single subclass stops, as soon as the necessary data became available.

Id., ¶ 335.

The detailed comparison of the Commission and Postal Service approaches in the R90-1 Remand opinion demonstrates that the Postal Service's position on attribution of city carrier access costs has been fully considered, and finally, rejected. The Commission has chosen an access cost methodology, and it has made its choice clear. The Postal Service should not waste further Commission and participant time re-treading the same ground.

The Postal Service's resistance to accepting the PRC as the final authority on attribution issues arises in the case of the treatment of cost segment 9 costs, those associated with special delivery messengers. The Postal Service concedes that, while cost differences are small (between the Commission and Postal Service approaches) for most of the special services included in Docket No. MC96-3, they are not for special delivery. The Service's argument continues that special delivery costs and cost coverages are irrelevant because the Postal Service proposes to eliminate the service. However, it is premature to treat special delivery as already defunct. One of the decisions that will need to be made by the Commission in the instant case is whether to abolish this service. In resolving this issue, an important consideration may be the cost coverage associated with special delivery. The choice of an attribution methodology for segment 9 costs drives the cost coverage level of the service. In order to evaluate all of these factors properly the Commission should have available the attributable costs of special delivery based upon the approved, PRC format.

As a separate ground for requiring a PRC-format CRA, it is entirely possible that the Commission might not wish to recommend the fee increases for special services proposed by the Postal

Service because of the inequity of proposed cost coverages for the special services included in this proceeding as compared to those special services excluded from the case. The Commission should have the PRC-format CRA available so that an apples-to-apples comparison of the cost coverages of the included/excluded groups of special services can be made.

Unlike the Postal Service, the Commission takes a long view of the question of how to apply Congress' objectives in enacting the causation requirement of § 3622(b)(3), particularly with respect to city carrier access cost attribution. The Postal Service recommends focusing only on the end result of applying its or the Commission's attribution methodology, not the principles of causation. While cost differences between the Commission and Postal Service approaches may be small for the narrow range of special services included in the instant proceeding, they may be large for classes and services affected in future proceedings, particularly where city carrier access cost is a material cost component. Indeed, in the PRC Op. R90-1 on Remand, ¶ 324, the Commission observed that "attribution levels under the USPS/MOAA approach are much lower than estimated by either the Commission or Professor Sowell's methodologies."²

² Likewise, as pointed out by the Postal Service in its motion for reconsideration, differences in attribution

Consequently, in cases where proposed rate changes are more extensive, choosing between the Commission's and the Postal Service's attribution methodology does make a difference. The prudent course for the Commission to follow is to enforce compliance with its established methodology in all cases, whether cost differences are large or small.

The Postal Service's claim that it has complied with Rule 54 is irrelevant. The general nature of the rule does not give the Postal Service the power to usurp the Commission's authority to interpret and apply § 3622(b)(3) of title 39. And the rule explicitly states that the Commission may request additional information under Rule 54(a)(4).

Even courts give deference to an agency's interpretation of its enabling legislation based on the agency's expertise in policy matters.³ It is an affront to the principles of jurisprudence for the Postal Service, a regulatee, to refuse to give deference to the Postal Rate Commission's interpretation of the Postal Reorganization Act.

methodology for special delivery costs also result in substantial discrepancies in cost coverage.

³ Nat'l Wildlife Fed'n v. Gorsuch, 693 F. 2d 156, 169 (D.C. Cir. 1982).

The Postal Service's contention that it is unduly burdensome for it to generate a "PRC CRA" and that the Commission should do so itself are two sides of the same coin. The Commission's directive that the Postal Service generate the "PRC CRA" is a reasonable one given that Postal Service witnesses are more likely to be proficient in the use of computer models needed to generate the CRA. The Postal Service's estimate of 10-15 person-days to comply with Order No. 1120 should not pose a serious risk of delay at this early stage of the proceeding. If ten to fifteen days are required, OCA urges the Commission to set a liberal due date fifteen days following a Commission order denying the motion for reconsideration.⁴

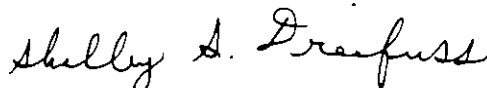
⁴ One of the justifications offered by the Postal Service for non-compliance is that, "[W]itness Patelunas finds it 'likely' that he 'will not be able to exactly replicate the Commission's model.'" This contention is spurious as the Postal Service knows that all that can be expected is a good faith effort to comply, not a perfect or guaranteed outcome.

In conclusion, OCA states its opposition to the Postal Service's motion for reconsideration of Order No. 1120 and urges the Commission to insist upon full compliance with the order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 3.B(3) of the special rules of practice.



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